

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
China Post Group—United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-7

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT
FOR BIALTERAL AGREEMENT WITH CHINA POST 2011 AND
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(August 30, 2011)

The Public Representative hereby provides comments pursuant to Order No. 818.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's notice of a Type 2 rate adjustment for inbound letter post items entered with the Postal Service pursuant to an additional Inbound Market Dominant Multi-Service Agreement.² The notice concerns the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (China Post 2011 Agreement) to be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 1.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post

¹ PRC Order No. 817, Notice and Order Concerning Rate Adjustment for Bilateral Agreement with China Post 2011 and Functionally Equivalent Negotiated Service Agreement, August 22, 2011.

² Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 16, 2011 (herein "Notice").

2010 Agreement) within the product. The Commission subsequently approved, in Order No. 700, the functionally equivalent HongKong Post Agreement.³

The Postal Service asserts that the negotiated rates in the China Postal 2011 Agreement represent an “improvement over the default rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items.” Notice at 1. The negotiated rates are intended to become effective on October 1, 2011, after the rates set forth in the China Post 2010 Agreement expire on September 30, 2011, and remain in effect until December 31, 2012, unless terminated sooner. *Id.* at 3 and 11. The Postal Service also asserts that the China Post 2011 Agreement is similar to the China Post 2010 Agreement, TNT Agreement, and the HongKong Post Agreement.⁴ Consequently, the Postal Service requests that the China Post 2011 Agreement be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 2.

COMMENTS

The Public Representative has reviewed China Post 2011 Agreement and the supporting financial model filed under seal that accompanied the Postal Service’s notice. Based upon that review, the Public Representative concludes, like the Postal Service, that to the extent the negotiated rates exceed the UPU terminal dues rates for inbound letter post items, the China Post 2011 Agreement represents an improvement. However, the negotiated rates in the 2011 Agreement do not represent an improvement compared to the rates set forth in the China Post 2010 Agreement. The financial model reveals that the unit contribution and the cost coverage are less than the same figures in the China Post 2010 Agreement for reasons that are both revenue and cost related. Consequently, the China Post 2011 Agreement does not improve the financial position of the Postal Service. In addition, the Public Representative concludes that the China

³ See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011.

⁴ Notice at 2. The Postal Service notes that In Order No. 549, the Commission did not indicate whether the China Post 2010 Agreement or the TNT Agreement “would serve as the ‘baseline’ agreement for functional equivalence comparisons with future agreements.” *Id.*, at 10 n.6. As a result, the Postal Service compares the inbound portion of the China Post 2010 Agreement with the China Post 2010 Agreement for purposes of functional equivalence. *Id.*, at 9-10.

Post 2011 Agreement is not functionally equivalent to the baseline China Post 2010 Agreement.

Functional Equivalence. Despite the Postal Service's assertion, the terms of the China Post 2011 Agreement are not similar to the inbound portion of the China Post 2010 Agreement in one important respect. The China Post 2011 Agreement establishes a new requirement included in the provisions of Article 3 and the first paragraph of Annex 1. As discussed in the Public Representative's comments in Docket No. CP2011-68, these two provisions concern yet-to-be negotiated "Accounting Business Rules" governing the financial settlement process for inbound letter post as well as competitive inbound Air Parcels, Surface Parcels and Express Mail Service (EMS).⁵ Article 3, Oversight and Effective Date, provides that the effective date of the China Post 2011 Agreement is contingent upon agreement to this separate accord. As a result, "the timing of agreement on this separate accord could negatively affect the intended effective date of the China Post 2011 Agreement and Postal Service revenues."⁶

Financial Improvement. Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that these criteria are not implicated by the inbound China Post 2011 Agreement. Notice at 5-6, and 8. With respect to criterion (1), however, the financial model indicates that the China Post 2011 Agreement does not represent a financial improvement to the Postal Service given that the unit contribution and the cost coverage both decrease relative to the unit contribution and the cost coverage shown in the financial model accompanying the China Post 2010 Agreement.

⁵ Public Representative Comments on Postal Service Notice of Filing Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, August 29, 2011, at 3-4.

⁶ *Id.* at 4.

For the China Post 2011 Agreement, the financial model reveals that negotiated rates per kilogram for the 16 inbound letter post “streams” are less than or equal to the rates for the same streams in the China Post 2010 Agreement.⁷ More specifically, rates for nine of the 16 inbound letter post streams are less than the rates in the China Post 2010 Agreement.⁸ By contrast, unit costs increase on average for the processing, delivery and domestic air and surface transportation cost categories compared to the same cost categories reported in the financial model accompanying the China Post 2010 Agreement. Only the Other cost category shows a decrease in unit cost. As a result, the unit contribution and the cost coverage for the inbound China Post 2011 Agreement decrease relative to the unit contribution and cost coverage under the inbound China Post 2010 Agreement.

CONCLUSIONS

The terms of the inbound China Post 2011 Agreement are not similar to the baseline China Post 2010 Agreement because the 2011 Agreement makes the effective date contingent upon agreement on a separate accord. Moreover, as discussed above, the timing of such agreement has negative implications for Postal Service revenues. There is no similar conditional effective date in the China Post 2010 Agreement.

In addition, the negotiated rates in the China Post 2011 Agreement are unlikely to satisfy the criterion set forth in 39 U.S.C. § 3622(c)(10)(A)(i). The financial model accompanying the China Post 2011 Agreement indicates that negotiated rates do not improve the financial position of the Postal Service, as the unit contribution and the cost coverage decrease relative to the same figures estimated for the China Post 2010 Agreement. As a result, the Postal Service will receive less in total contribution during the 15 month period of the inbound China Post 2011 Agreement compared to the total contribution estimated for the 12 month period of the China Post 2010 Agreement.

⁷ Compare Excel file (Non-Public) China_MD_IB_2011.08.08.xls, worksheet tab 10_Current_TDues_Rates, and the Excel file (Non-Public) accompanying the China Post 2010 Agreement, China_MD_IB_2010.08.09.xls, worksheet tab 10_Current_TDues_Rates, Docket Nos. MC2010-35 and R2010-6.

⁸ *Id.*

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

James F. Callow
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6839
callowjf@prc.gov